

AGC of America

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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Oppose Efforts to Require Mandatory Bid Listing

Background:

Mandatory bid listing would require a general contractor to list all subcontractors when a bid is submitted and would only allow substitution with permission of the government's contracting officer. Previous attempts to require bid listing creates a whole host of problems in the administration of federal construction contracts, including delays in awards of contracts, rejected low bids, project delays and higher procurement costs. Mandatory bid listing undermines the government's attempts to streamline procurement, removes the flexibility of the prime contractor to manage projects, and does not improve the quality or decrease the cost of construction projects.

AGC Message:

Locking A Prime Contractor Into Business Relationships that can be Revised Only With the Permission of the Contracting Officer is Contrary to the Commercial Practice of Holding Prime Contractors Accountable for Properly Managing Their Subcontracts. Bid listing would insert the contracting officer into contractor management decisions that should reside with the contractor. There is little or no protection to be gained by the government through this process, because the government does not control the subcontractors used in the original bid or offer. Focusing instead on desired mission-related outcomes and tying payment to the contractor's success in achieving those outcomes - a performance-based approach - puts the burden of good contract performance on the contractor and enhances performance. The government's protection lies not in micro-managing the prime contractor, but rather in being a smart buyer, specifying the right quality, and holding the contractor and its subcontractors to meeting the specifications by performing sufficient quality inspections to ensure they are met.

Bid Listing Requirements Could Adversely Affect the Timeliness and Cost of Contract Performance and Would Increase the Government's Administrative Expenses. The process for changing a designated subcontractor is cumbersome and could well have an impact on the work completion schedule as well as any efforts of other subcontractors whose work is dependent on the replacement subcontractor. As a practical matter, a prime contractor may not be able to identify all subcontractors at the time of proposal. Often, a prime contractor proposes based on estimates and past experience. Prime contractors deprived of this flexibility might well decide not to bid on government construction contracts or, alternatively, submit higher bids that could increase the cost to construct public works. This would likely reduce the quality of the winning contractor's subcontract team if prime contractors are forced to enter into binding relationships with potential subcontractors prior to award of the prime contract.

Mandatory Bid Listing Negatively Impacts the Overall Quality of the Subcontractors. Forcing primes to identify each and every subcontractor prior to contract award deprives the prime and the government of the best subcontract team. Prime contractors sometimes enter into exclusive agreements with subcontractors. Because of such arrangements, the best subcontractors may not be available for Government work if they are part of a losing bid. The Bill would promote these practices to the Government's detriment.

Bid Listing Undermines the Contractual Relationship Between General Contractors and Subcontractors. Mandatory bid listing could draw the government into disputes between contractors and their subcontractors, with concomitant liability. A major tenet of government contracting is that the Federal government has no privity of contract with subcontractors. Bid listing blurs that distinction and is unacceptable on that basis alone.

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